IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 10739 of 2007(C)

PETITIONER:

M/S.K.T.C AUTOMOBILES (P) LTD,
Y.M.C.A ROAD,KOZHIKODE-REP.BY ITS MANAGING DIRECTOR,P.V.NIDHISH

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. **STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT,TAXES DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM.**

2. **DEPUTY COMMISSIONER (APPEALS), COMMERCIAL TAXES,KOZHIKODE.**

3. **THE ASSISTANT COMMISSIONER(KGST), SALES TAX OFFICE,SPECIAL CIRCLE 1,KOZHIKODE.**

4. **THE SALES TAX OFFICER (RECOVERY), C/O.DEPUTY COMMISSIONER,COMMERCIAL TAXES DEPARTMENT,KOZHIKODE-6.**

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 10739 OF 2007-C

JUDGMENT

The petitioner challenges Ext.P5 interim order as modified by Ext.P6. It has been ordered to pay 50% of the disputed tax. The petitioner points out that the disputed tax relates to the tax payable for the sale of 74 vehicles. Those vehicles were consigned to Mahe and sales were made from there. It is also pointed out that the registering authority in Mahe has registered those vehicles and the Pondicherry sales tax authorities have assessed sales tax for those vehicles. So, the addition of the value of those vehicles to the total taxable turnover of the petitioner is unjustified. A similar case which arose during the previous year was allowed, upholding the contention of the petitioner by the Division Bench of this Court, it is pointed out.

2. The learned Government Pleader pointed out that the addition to the turnover is not confined to the sale of 74 vehicles alone. There are other valid additions also. Therefore, the petitioner is liable to pay tax, even if its contention regarding the sale of 74 vehicles is correct. Having regard to the contentions of both sides, I feel that stay can be granted on more liberal terms. If the petitioner pays Rs.5 lakhs on or before 31.3.2007, further

recovery pursuant to Ext.P4 shall be kept in abeyance, till the disposal of Ext.P2 appeal. The petitioner shall co-operate with the appellate authority for early disposal of the appeal. The appellate authority shall endeavour to dispose of the appeal as expeditiously as possible. It is made clear that I have not expressed any opinion on the merits of the claim of the petitioner and the appellate authority will be free to take a decision, having regard to the submissions and materials placed before it.

The Writ petition is disposed of as above.

28th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/